

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Shirley Lindsay,

Plaintiff,

v.

The Gully LLC, a California
Limited Liability Company;
Hye Kiong Cindy Jung;
Mike Jung; and Does 1-10,

Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For Violations
Of: American's With Disabilities
Act; Unruh Civil Rights Act**

Plaintiff Shirley Lindsay complains of Defendants The Gully LLC, a California Limited Liability Company; Hye Kiong Cindy Jung; Mike Jung; and Does 1-10 ("Defendants") and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. She suffers from arthritis (osteoarthritis of multiple joints; spinal stenosis of the lumbar spine; and essential hypertension) of her hands, knees, and hips. She uses both a cane and wheelchair for mobility.

1 2. Defendant The Gully LLC owned the property located at or about 446
2 S. Topanga Canyon Blvd., Topanga, California, in June 2014.

3 3. Defendant The Gully LLC owns the property located at or about 446 S.
4 Topanga Canyon Blvd., Topanga, California, currently.

5 4. Defendants Hye Kiong Cindy Jung and Mike Jung owned the
6 Fernwood Market ("Market") located at or about 446 S. Topanga Canyon
7 Blvd., Topanga, California, in June 2014.

8 5. Defendants Hye Kiong Cindy Jung and Mike Jung own the Fernwood
9 Market ("Market") located at or about 446 S. Topanga Canyon Blvd.,
10 Topanga, California, currently.

11 6. Plaintiff does not know the true names of Defendants, their business
12 capacities, their ownership connection to the property and business, or their
13 relative responsibilities in causing the access violations herein complained of,
14 and alleges a joint venture and common enterprise by all such Defendants.
15 Plaintiff is informed and believes that each of the Defendants herein,
16 including Does 1 through 10, inclusive, is responsible in some capacity for
17 the events herein alleged, or is a necessary party for obtaining appropriate
18 relief. Plaintiff will seek leave to amend when the true names, capacities,
19 connections, and responsibilities of the Defendants and Does 1 through 10,
20 inclusive, are ascertained.

21
22 **JURISDICTION & VENUE:**

23 7. This Court has subject matter jurisdiction over this action pursuant to
24 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans
25 with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

26 8. Pursuant to supplemental jurisdiction, an attendant and related cause
27 of action, arising from the same nucleus of operative facts and arising out of
28 the same transactions, is also brought under California's Unruh Civil Rights

1 Act, which act expressly incorporates the Americans with Disabilities Act.

2 9. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
3 founded on the fact that the real property which is the subject of this action is
4 located in this district and that Plaintiff's cause of action arose in this district.

5
6 **FACTUAL ALLEGATIONS:**

7 10. The Plaintiff went to the Market in June 2014 to shop.

8 11. The Market is a facility open to the public, a place of public
9 accommodation, and a business establishment.

10 12. Parking spaces are one of the facilities, privileges and advantages
11 offered by defendants to their customers at the Market.

12 13. Although parking spaces are one of the facilities available to patrons of
13 the Market, there was not a single compliant accessible parking space
14 reserved and marked for use by persons with disabilities in compliance with
15 the Americans with Disability Act Accessibility Guidelines (ADAAG) in June
16 2014.

17 14. There is not a single, compliant accessible parking space designed and
18 marked for use by persons with disabilities in the parking lot currently.

19 15. The plaintiff personally encountered the lack of accessible parking in
20 June 2014.

21 16. This inaccessible condition denied the plaintiff full and equal access
22 and caused her difficulty and frustration.

23 17. Meanwhile, and even though the plaintiff did not personally confront
24 the following barriers, the transaction counters in the Market are not
25 accessible to wheelchair users. There is no lowered, 36 inch portion of deli
26 counter for use by persons in wheelchairs.

27 18. Moreover, the transaction counter at the front of the Market is not
28 accessible because there is no lowered, 36 inch portion counter for use by

1 persons in wheelchairs.

2 19. Plaintiff would like to return and patronize the Market but will be
3 deterred from visiting until the defendants cure the violations.

4 20. Plaintiff's knowledge of the barriers prevents her from returning even
5 though she would like to visit again.

6 21. Indeed, plaintiff lives in Los Angeles County and shops, seeks services,
7 and otherwise patronizes businesses throughout the County.

8 22. The Market is conveniently located for plaintiff.

9 23. The defendants have failed to maintain in working and useable
10 conditions those features required to provide ready access to persons with
11 disabilities.

12 24. The violations identified above are easily removed without much
13 difficulty or expense. They are the types of barriers identified by the
14 Department of Justice as presumably readily achievable to remove and, in
15 fact, these barriers are readily achievable to remove. Moreover, there are
16 numerous alternative accommodations that could be made to provide a
17 greater level of access if complete removal were not achievable.

18 25. Given the obvious and blatant violations, the plaintiff alleges, on
19 information and belief, that there are other violations and barriers on the site
20 that relate to his disability. Plaintiff will amend the complaint, to provide
21 proper notice regarding the scope of this lawsuit, once he conducts a site
22 inspection. However, please be on notice that the plaintiff seeks to have all
23 barriers related to his disability remedied. See *Doran v. 7-11*, 506 F.3d 1191
24 (9th Cir. 2007) (holding that once a plaintiff encounters one barrier at a site,
25 he can sue to have all barriers that relate to his disability removed regardless
26 of whether he personally encountered them).

27 26. Additionally, on information and belief, the plaintiff alleges that the
28 failure to remove these barriers was intentional because: (1) these particular

1 barriers are intuitive and obvious; (2) the defendants exercised control and
 2 dominion over the conditions at this location and, therefore, the lack of
 3 accessible facilities was not an “accident” because had the defendants
 4 intended any other configuration, they had the means and ability to make the
 5 change.

6
 7 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**
 8 **WITH DISABILITIES ACT OF 1990** (On behalf of plaintiffs and against all
 9 defendants (42 U.S.C. section 12101, et seq.)

10 27. Plaintiff repleads and incorporates by reference, as if fully set forth
 11 again herein, the allegations contained in all prior paragraphs of this
 12 complaint.

13 28. Under the ADA, it is an act of discrimination to fail to ensure that the
 14 privileges, advantages, accommodations, facilities, goods and services of any
 15 place of public accommodation is offered on a full and equal basis by anyone
 16 who owns, leases, or operates a place of public accommodation. See 42
 17 U.S.C. § 12182(a). Discrimination is defined, inter alia, as follows:

- 18 a. A failure to make reasonable modifications in policies, practices,
 19 or procedures, when such modifications are necessary to afford
 20 goods, services, facilities, privileges, advantages, or
 21 accommodations to individuals with disabilities, unless the
 22 accommodation would work a fundamental alteration of those
 23 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 24 b. A failure to remove architectural barriers where such removal is
 25 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
 26 defined by reference to the ADAAG, found at 28 C.F.R., Part 36,
 27 Appendix “D.”
- 28 c. A failure to make alterations in such a manner that, to the

1 maximum extent feasible, the altered portions of the facility are
2 readily accessible to and usable by individuals with disabilities,
3 including individuals who use wheelchairs or to ensure that, to
4 the maximum extent feasible, the path of travel to the altered
5 area and the bathrooms, telephones, and drinking fountains
6 serving the altered area, are readily accessible to and usable by
7 individuals with disabilities. 42 U.S.C. § 12183(a)(2).

8 29. Pursuant to 28 C.F.R., Part 36, Appendix D (herein after “1991
9 Standards”), section 4.1.2, and 36 C.F.R., Part 1191, Appendix B (herein
10 after “2010 Standards”), section 208.2, if a business provides between 1 and
11 25 parking spaces, they must provide at least one handicap parking space that
12 is van accessible (having an eight foot access aisle).

13 30. Here, the defendants did not provide a single compliant accessible
14 parking space in its parking lot.

15 31. In areas used for transactions that may not have a cash register but at
16 which goods or services are sold or distributed, the business must provide
17 either: (1) a portion of the main counter which is a minimum of 36 in inches
18 length shall be provided with a maximum height of 36 inches; or (2) an
19 auxiliary counter with a maximum height of 36 inches in close proximity to
20 the main counter; or (3) some sort of qualifying equivalent facilitation. 1991
21 Standards § 7.2(2). Under the 2010 Standards, where the approach to the
22 sales or service counter is a parallel approach, such as in this case, there must
23 be a portion of the sales counter that is no higher than 36 inches above the
24 floor and 36 inches in width and must extend the same depth as the rest of
25 the sales or service counter top. 2010 Standards § 904.4 & 904.4.1.

26 32. Here, no such accessible transaction counter has been provided in
27 violation of the ADA.

28 33. In areas used for transactions where counters have cash registers and

1 are provided for sales or distribution of goods or services to the public, at least
 2 one of each type shall have a portion of the counter which is at least 36 inches
 3 in length with a maximum height of 36 inches above the floor. 1991
 4 Standards § 7.2(1). Under the 2010 Standards, where the approach to the
 5 sales or service counter is a parallel approach, such as in this case, there must
 6 be a portion of the sales counter that is no higher than 36 inches above the
 7 floor and 36 inches in width and must extend the same depth as the rest of
 8 the sales or service counter top. 2010 Standards § 904.4 & 904.4.1.

9 34. Here, no such accessible transaction counter has been provided in
 10 violation of the ADA.

11 35. A public accommodation must maintain in operable working condition
 12 those features of its facilities and equipment that are required to be readily
 13 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

14 36. Here, the failure to ensure that the accessible facilities were available
 15 and ready to be used by the plaintiff is a violation of the law.

16 37. Given its location and options, the Market is a business that the
 17 plaintiff will continue to desire to patronize but she has been and will
 18 continue to be discriminated against due to the lack of accessible facilities
 19 and, therefore, seeks injunctive relief to remove the barriers.

20
 21 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
 22 **RIGHTS ACT** (On behalf of plaintiffs and against all defendants) (Cal Civ §
 23 51-53)

24 38. Plaintiff repleads and incorporates by reference, as if fully set forth
 25 again herein, the allegations contained in all prior paragraphs of this
 26 complaint.

27 39. Because the defendants violated the plaintiffs' rights under the ADA,
 28 they also violated the Unruh Civil Rights Act and are liable for damages. (Civ.

1 Code § 51(f), 52(a).)

2 40. Because the violation of the Unruh Civil Rights Act resulted in
3 difficulty, discomfort or embarrassment for the plaintiffs, the defendants are
4 also each responsible for statutory damages, i.e., a civil penalty. (Civ. Code §
5 55.56(a)-(c).)

6
7 **PRAYER:**

8 Wherefore, Plaintiff prays that this court award damages and provide
9 relief as follows:

10 1. For injunctive relief, compelling defendants to comply with the
11 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
12 Plaintiff is not invoking section 55 of the California Civil Code and is not
13 seeking injunctive relief under the Disabled Persons Act at all.

14 2. Damages under the Unruh Civil Rights Act which damages provide for
15 actual damages and a statutory minimum of \$4,000.

16 3. Reasonable attorney fees, litigation expenses and costs of suit,
17 pursuant to 42 U.S.C. § 12205; Cal. Civ. Code § 52.

18 Dated: December 14, 2015 CENTER FOR DISABILITY ACCESS

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20 
21 By: _____
22 Mark Potter, Esq.
23 Attorneys for Plaintiff
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